

Fact Sheet #28G: Certification of a Serious Health Condition under the Family and Medical Leave Act

The Family and Medical Leave Act (FMLA) entitles eligible employees who work for covered employers to take unpaid, job-protected leave for specified family and medical reasons, with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.

The employer may require the employee to submit a certification from a health care provider to support the employee's need for FMLA leave to care for a covered family member with a serious health condition or for the employee's own serious health condition. The employer **may not** request a certification for leave to bond with a newborn child or a child placed for adoption or foster care. For information about certification requirements for military family leave, *see* [Fact Sheet 28M\(c\): Qualifying Exigency Leave under the Family and Medical Leave Act](#); [Fact Sheet 28M\(a\): Military Caregiver Leave for a Current Servicemember under the Family and Medical Leave Act](#); and [Fact Sheet 28M\(b\): Military Caregiver Leave for a Veteran under the Family and Medical Leave Act](#).

The employer must notify the employee each time a certification is required. The employer's notice must be included in the written notice of FMLA rights and responsibilities given to the employee when leave is first requested. The employer may request certification at a later date if it questions the appropriateness of the leave or its duration.

MEDICAL CERTIFICATION

If the employer requests medical certification, the employee is responsible for providing a *complete and sufficient certification*, generally within 15 calendar days after the employer's request. The employee is responsible for paying for the cost of the medical certification and for making sure the certification is provided to the employer. If the certification is incomplete or insufficient, the employer must give the employee a written notice stating what additional information is necessary to make the certification complete and sufficient. The employee must provide the additional information to the employer within seven calendar days, in most circumstances.

- A certification is considered "incomplete" if one or more of the *applicable* entries on the form have not been completed.
- A certification is considered "insufficient" if the information provided is vague, unclear, or non-responsive.

Content of the certification - Information on the certification may include: contact information for the health care provider; the date the serious health condition began and how long it will last; appropriate medical facts about the condition; for leave for the employee's own serious health condition, information showing that the employee cannot perform the essential functions of the job; for leave to care for a family member, a statement of the care needed; for intermittent leave, information showing the medical necessity for intermittent or reduced

schedule leave and either the dates of any planned leave or the estimated frequency and duration of expected incapacity due to the condition.

Consequences - If the employee does not provide the requested certification within the time required or fails to provide a complete and sufficient certification despite the opportunity to cure any deficiencies, the employer may deny the employee's request for FMLA leave.

Annual certification - If the employee's need for FMLA leave lasts beyond a single FMLA leave year, the employer may require the employee to provide a new medical certification in each new FMLA leave year.

Certification forms - The FMLA does not require the use of any specific certification form. The Department has developed optional forms that can be used for leave for an employee's own serious health condition (WH-380-E) or to care for a family member's serious health condition (WH-380-F), or the employer may use its own forms. If the employer chooses to use its own forms, it may not require any additional information beyond what is specified in the FMLA and its regulations. Employers must accept a complete and sufficient medical certification, regardless of the format. In all instances, the information requested on the certification form must relate only to the serious health condition for which the employee is seeking leave. The Department's forms are available for free at www.dol.gov/whd/fmla.

AUTHENTICATION AND CLARIFICATION

Once the employer has received a complete and sufficient certification, **the employer may not request additional information from the health care provider**. However, the employer may use a human resources professional, a leave administrator, another health care provider, or a management official to contact the health care provider to authenticate or to clarify the certification. For example, the employer's appropriate representative could ask the health care provider if the information contained on the form was completed or authorized by him or her, or ask questions to clarify the handwriting on the form or the meaning of a response. Under **no** circumstances may the employee's direct supervisor contact the employee's health care provider.

SECOND AND THIRD OPINIONS

If the employer has received a complete and sufficient certification but has a reason to doubt that it is valid, the employer may require the employee to obtain a second medical certification. The employer can choose the health care provider to provide the second opinion, but generally may not select a health care provider who it employs on a regular or routine basis. If the second opinion differs from the original certification, the employer may require the employee to obtain a third certification from a healthcare provider selected by both the employee and employer. The opinion of the third health care provider is final and must be used by the employer. The employer is responsible for paying for the second and third opinions, including any reasonable travel expenses for the employee or family member. While waiting for the second (or third) opinion, the employee is provisionally entitled to FMLA leave.

RECERTIFICATION

In general, the employer may request the employee to provide a recertification no more often than every 30 days and only in connection with an absence by the employee. If a certification indicates that the minimum duration of the serious health condition is more than 30 days, the employer must generally wait until that minimum duration expires before requesting recertification. However, in all cases, including cases where the

condition is of an indefinite duration, the employer may request a recertification for absences every six months. The employer may request a recertification in *less than 30 days* only if:

- the employee requests an extension of leave,
- the circumstances described by the previous certification have changed significantly, or
- the employer receives information that causes it to doubt the employee's stated reason for the absence or the continuing validity of the existing medical certification.

In general, the employer may ask for the same information in a recertification as that permitted in the original medical certification. However, an employer may provide the health care provider with a record of the employee's absences and ask if the serious health condition and need for leave is consistent with the leave pattern. The employee is responsible for paying for the cost of a recertification. The employer cannot require a second or third opinion for a recertification. In most circumstances, the employer must allow the employee at least 15 calendar days to provide the recertification after the employer's request.

FOREIGN MEDICAL CERTIFICATION

If the employee or the employee's family member is visiting another country, or a family member resides in another country, and a serious health condition develops, the employer must accept a medical certification, as well as second and third opinions, from a health care provider who practices in that country. If a medical certification by a foreign health care provider is not in English, the employer may require the employee to provide a written translation of the certification.

FITNESS-FOR-DUTY

The employer may have a policy or practice that requires employees in similar job positions who take leave for similar health conditions to provide a return to work, or "fitness-for-duty," certification from the employee's health care provider showing that the employee is able to resume work. The employer may request a fitness-for-duty certification *only* with regard to the particular health condition that caused the employee's need for FMLA leave. If the employer will require a fitness-for-duty certification, it must provide notice of that requirement and whether the certification must address the employee's ability to perform the essential functions of his or her job with the FMLA designation notice.

In general, a fitness-for-duty certification may not be required for each absence taken on an intermittent or reduced leave schedule. However, if the employer has a reasonable belief that the employee's return to work presents a significant risk of harm to the employee or to others, the employer may require a fitness-for-duty certification up to once every 30 days.

As long as the employer has provided the required notice regarding any fitness-for-duty certification requirement, the employee's return to work may be delayed until the fitness-for-duty certification is provided. An employer may contact an employee's health care provider to clarify or authenticate a fitness-for-duty certification, but cannot delay the employee's return to work while making that contact. An employer may not require second or third opinions for a fitness-for-duty certification. The employee is responsible for paying any cost of obtaining the fitness-for-duty certification. If State or local law or collective bargaining agreement governs an employee's return to work, those provisions must be applied.

ENFORCEMENT

It is unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by the FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to the FMLA. *See Fact Sheet 77B: Protections for Individuals under the FMLA.* The Wage and Hour Division is responsible for administering and enforcing the FMLA for most employees. Most federal and certain congressional employees are also covered by the law but are subject to the jurisdiction of the U.S. Office of Personnel Management or Congress. If you believe that your rights under the FMLA have been violated, you may file a complaint with the Wage and Hour Division or file a private lawsuit against your employer in court.

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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